

## **Notes from FPT meeting of Intergovernmental Affairs Deputy Ministers Tuesday, February 15<sup>th</sup>, 2022**

*The federal government was represented by DM Michael Vandergrift (MV) and Nathalie Drouin, Deputy Clerk of the Privy Council and Associate Secretary to Cabinet (ND).*

### **Key Points:**

- **Two orders will be tabled in Parliament, one pertaining to law enforcement measures, and another pertaining to measures applying to financial institutions;**
- **These measures will be debated and voted on in Parliament within seven sitting days;**
- **The law enforcement measures will be geographically-specific (focused on critical infrastructure) and time limited (expire in 30 days – can be renewed);**
- **The financial measures enables financial institutions to monitor “property” (accounts, credit cards, insurance products) owned by those participating in illegal protests, and can be frozen if needed;**
- **It was emphasized that because the scope of banking is national, the inclusion of these measures necessitated the EA being national in application, as opposed to invoked in one province only;**
- **PTs raised serious concern over the intergovernmental consultation process leading up the EA declaration, with MB and other PTs noting it was dramatically different from the 2020 EA consultation process. BC requested that DMs reconvene once related matters are concluded to review.**

### Opening Remarks:

MV: provides overview of legislative process, noting that information being provided should be considered embargoed. MV confirms the PM has declared an emergency under the Emergencies Act (EA), and the next step is to table “orders” which become the legal authority to act. These orders must be tabled in Parliament within seven sitting days, and will need to be debated and voted on. There will be a standing committee created to oversee the use of orders. This committee will table a report once they have completed their work, and there will also be a public inquiry into the use of the orders under EA once all has concluded. MV emphasized that the orders are to provide local law enforcement with additional tools to address the situations, and there is no attempt to replace their jurisdiction. MV also noted that as the financial tools involved require a national scope, it is also necessary to have the law enforcement measures available on a national basis and not geographically limited.

ND: Emphasizes that national picture remains precarious and there are areas of concern and potential for violence in various jurisdictions. There has been no formal foreign (state) interference, but there has been involvement of foreign nationals, both as participants and financial supporters. Regarding the Rules for Declaration (six areas of authorities), that what has been shared is more of a “chapeau” and will be actualized through two regulations – one focused on law enforcement and a second on financial aspects. The law enforcement regulation will define where the emergency authority will apply, notably focused towards critical infrastructure such as airports, ports of entry, trains. Shared that new regulation will make it an infraction for an adult to bring children anywhere near an unlawful assembly. The additional measures provided through the EA will be able to be used by any police force. Will enable CBSA to prevent foreign national from entering Canada to participate in unlawful demonstrations. Law enforcement can already block persons from bringing provisions to protestors at illegal protests (geographically limited / critical infrastructure) but the measures will provide more clarity and facilitate action. These measures cannot displace existing local law enforcement, only provides the ability to add to this capacity, if requested (the RCMP will not enter any jurisdiction in which they are not already contracted, unless requested to do so by the local authorities). ND reiterated that because the scope of financial institutions are national, this required EA to be applied nationally (as opposed to one PT). Noted that the two new regulations are being tabled today (Feb 15) and, at this time, no additional regulations are being contemplated, but, if needed, more can be developed to address evolving circumstances.

Roundtable:

- BC inquired as to whether the regulations will include the specific names of critical infrastructure sites that will be affected? ND answers no, but general type (e.g. ports of entry) will be noted and then applies to all sites meeting this definition. Some additional clarity will be provided on what constitutes a “parliamentary precinct”. The Minister of Public Safety can develop a definition of a particular zone if the situation requires.
- MB inquired as to the process of consultation and expressed concern over the robustness of the process that was conducted and that it appeared to be a “fait accompli”, with media reporting the PM would invoke the EA before the FMM. Noted that no indication was provided in advance of the FMM that the discussion would be about invoking the EA. As such, the application of section 25 of the EA was defective. Why a longer consultative process was not possible is not clear, noting a similar process followed in 2020 lasted between 12-14 days and included several FMM calls. Not sure the “threats to the security of Canada” threshold has been met. Not aware of any information, specific to the MB context, that would have required the invocation of EA. ND notes the situation remains volatile and it became clear on Sunday night that “other authorities” would be required to address the situation. Lots of economic and social disruption across Canada. The need for financial tools required a national application of EA, as banking is national.
- QC noted that regarding the procedures required to achieve for a meaningful and effective formal prior consultation can and should be improved in future circumstances, and there should be some lessons learned from this unique situation, should the EA ever be invoked again.
- AB shared concerns about the consultation process as well as the necessity of invoking EA. Inquired as to when ‘rationale’ for measures be made available. MV notes that additional information would be available in the letter being sent to Premiers, as well as in the orders that are to be tabled in the House of Commons.
- ON also expressed concern about the prior consultation process and asked for more information on the financial levers to be used. ND noted that within seven sitting days of Parliament, declarations will have to be debated, amended, or appealed. They will have a 30-day timeframe and will then expire. Can be renewed, but another round of consultations will be required before that can happen. Regarding the financial measures, it will require banks and other financial institutions to monitor “property” (includes accounts, credit cards, insurance, etc) owned by those involved in the illegal protests. Financial institutions can ask the RCMP for names of those to monitor. Banks can “freeze” accounts of those involved if needed (no criteria for such a determination was provided) and can be released when the owner can prove they are no longer involved in the illegal protest. MB noted there was a public reference to vehicle registration but ND suggested this may have been improperly referenced and noted that most PTs require insurance as a condition of their license.
- MB inquired as to whether PTs can “opt out” of having EA apply to specific geographically limited areas within their jurisdictions? Noted PM made reference to “not all tools apply in all jurisdictions”. ND noted that national scope of financial institutions has made it necessary to have EA apply across all provinces, but focused on geographically targeted areas of specific concern, notably key pieces of critical infrastructure. MV emphasizes that EA makes broader authorities available for use, but they do not have to be used if the local community does not need them.
- AB inquired that for provinces that contract with the RCMP, does the current chain of command still apply? Do local police forces still follow the existing chain of command? ND notes the new regulations will not change any chain of command and there is no intention of replacing any local police enforcement, only provide opportunities to call in RCMP where needed. AB also inquires as to whether compelling tow truck drivers to move vehicles might put them in harm’s way and this could be in violation of Charter rights? MV notes any order must comply with a Charter test.
- MV notes there will be additional discussions on this in other FPT fora, including for Public Safety, Transport, and Law Enforcement.